



## CHALLENGING DIMENSION OF THE PROBLEM OF DRUG ABUSE IN INDIA: A SOCIO-LEGAL ANALYSIS

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### Abstract

*In India drug abuse is big problem it creates branches of problems like poverty, unemployment, irresponsibility towards family. If we are trying to discuss about any problem, we are getting two things in our mind usually those are causes and its solution. This study is a study on drug abuse in Indian perspective so this study is an attempt to discuss the causes and solution of the problem of drug abuse. Causes of drug abuse can be categorized in three ways social, economic and mental causes. At present we have various laws to prevent drug abuse but there is lack of implementation and lacunae in it. Social responsibility is also important to curb the problem of drug abuse, this study is an attempt to suggest social as well as legal responsibilities to curb it. This paper is focusing on the problem of drug abuse and analyse the existing law related to curb the problem of drug abuse in India. It is an evaluation on policies of government relating to supply of drugs and its proper inspection. This study is an attempt to provide suggestions to curb the problem of drug abuse. This study is trying to assist to central and state government for counselling, identification, treatment and rehabilitation of drug addicts.*

**Keywords:** Drug Abuse, Socio-legal, Judicial Interpretation, Death Penalty.



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### Introduction

Drug abuse is a process of misuse of drug through various ways, addicts are using substance which is easily available like cough syrups, pain killer ointments, glue, colophony, paints, gasoline and cleaning fluids. Whitener, alcohol, tobacco, hard and soft drugs is commonly being used by street and working children. Drug abuse is become a big problem in our country specially in these state Manipur, Mizoram, Nagaland, Himachal Pradesh, Punjab, Haryana and Western Rajasthan. Punjab and Manipur are in top in this list.<sup>1</sup>

At present, drug abuse is being seen as a complex problem because it is internally linked with other serious crimes such as organized crimes, human trafficking and money laundering.<sup>2</sup> The seriousness of this problem can be traced to the information provided by the

<sup>1</sup> Standing Committee on Social Justice and Empowerment, 25<sup>th</sup> Report on Persons affected by Alcoholism and Substance (Drug) Abuse, Their Treatment/Rehabilitation and role of Voluntary Organizations (Ministry of Social Justice and Empowerment, 2015).

<sup>2</sup> A Detailed Analysis of the National Drugs and Psychotropic Substances Act, *available at:*

National Crime Records Bureau (NCRB) that in 2010 and 2009, Narcotics of Rs.19.51 crore and Rs.17.05 crore were seized.<sup>3</sup>

Drug abuse may decrease the memory of the user and it can take the life of the user. It may be a cause of various disease like HIV/AIDS, heart attack, cancer etc. This study is focusing on various aspects of drug abuse like forms of drug abuse, causes of drug abuse and trying to provide suggestions to curb the problem. Drug abuse is a stigma for every country especially it is very bad for developing country like India.

There are many reasons to make Drug Abuse as an illegal activity, some of them are – Abuse of drug is injurious to health which can take the life of a person and it is very important to make aware to young people to the danger of misuse of drug. India n Constitution is also prohibited the misuse of drugs, under Article 47 it is the responsibility of the state to prohibit the misuse of drugs. Through this mandate three central Acts has been enacted which are - Drugs and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act, 1985 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. Beside these problems and preventive measures we are still facing the problem of drug abuse, so there is a need of study on drug abuse. This study is focusing on the problem of drug abuse in present scenario, its causes and suggestions to curb it.<sup>4</sup>

Drugs are being used in various forms we can categorize it in three ways, first category is of drugs which is being used usually like - cough syrups, pain killer ointments. Second category is of those things which are being used for intoxication like - alcohol, tobacco, cocaine, heroin, cannabis, opium. Third category is of those thing which is not an alcohol or drug but it can be used for intoxication like - glue, colophony, paints, gasoline and cleaning fluids, whitener.

### **Statutory provisions in India**

The Indian legislature is constantly trying to eliminate the problem of misuse of drugs by making the law to achieve the goals of international treaties and conventions under which the India is a signatory country. These international treaties and conventions are as follows:<sup>5</sup>

1. Convention on Narcotic Drugs, 1961.
2. Convention on Psychotropic Substances, 1971.
3. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.
4. Transnational Crime Convention, 2000.

Indian Parliament has enacted two Central Acts:

1. The Narcotic Drugs and Psychotropic Substances Act, 1985, and
2. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The use of intoxicated drugs is a serious socio-economic problem in our country. This despite the fact that there are legal as well as constitutional provisions made in India to curb

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<https://blog.ipleaders.in/a-detailed-analysis-of-the-national-drugs-and-psychotropic-substances-act/> (Visited on August 7, 2017)

<sup>3</sup> Ibid.

<sup>4</sup> Richard Wilson and CheryKolander, *Drug Abuse Prevention* 48 (Jones and Bartlett Publishers, Ontario, 3<sup>rd</sup>edn., 2011).

<sup>5</sup> Standing Committee on Social Justice and Empowerment, 25<sup>th</sup> Report on Persons affected by Alcoholism and Substance (Drug) Abuse, Their Treatment/Rehabilitation and role of Voluntary Organizations (Ministry of Social Justice and Empowerment, 2015).

the problem of drug addiction. Article 47<sup>6</sup> of the Constitution states that the state shall work towards increasing the level of life and nutrition of its people and it is the primary duty of the state to improve the public health. State shall prohibit the consumption of the intoxicated drugs and drinks which are injurious to health except its use for medical purpose.<sup>7</sup> Although Part IV<sup>8</sup> are non-enforceable,<sup>9</sup> usually this provision<sup>10</sup> applies to justify penal drug policies. Drugs and Poisons are the subjects of the concurrent list<sup>11</sup> on which both the state and the centre can make law.

The Indian Parliament passed the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), without much debate. The NDPS Act came into force on 14 November 1985, replacing the Opium Acts and the Dangerous Drugs Act. The 1940 Drugs and Cosmetics Act, 1940, however, continues to apply.<sup>12</sup>

The Narcotic Drugs and Psychotropic Substances Act, 1985 was passed to curb the problem of drug abuse and for the implementation of the international treaties and conventions. The act was amended in 1989, 2001 and in 2014. This act prevents merchandise, cultivation, procurement, import Export, Possession, sale, purchase, utilization and circulation of narcotic drugs and psychotropic substances except for medical and scientific purposes in accordance with the law.<sup>13</sup>

Narcotic drug comprises cannabis, coca, opium and manufactured drugs.<sup>14</sup> The Narcotic Drugs and Psychotropic Substances Act, 1985 defined the term psychotropic substance as any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule.<sup>15</sup> This act provides the provisions for search, forfeiture and capture the persons from any place in India those are indulge in the drug activities.

The hardness of this act proves that if a person is caught again in a large quantity of narcotics, then there is a provision for death sentence.<sup>16</sup> Although in the case of Harm Reduction Network v. Union of India,<sup>17</sup> the Bombay High Court ruled that death penalty under Narcotic Drugs and Psychotropic Substances Act, 1985 is unconstitutional but the Court did not strike down Section 31-A of this act. It did state that the courts were no longer obligated to hand down the death penalty for repeat drug offenders under the Act.

In the case of E. Michael Raj v. Intelligence Officer, Narcotic Control Bureau,<sup>18</sup> the Supreme Court held that in the mixture of a narcotic drug or a psychotropic substance with one or more neutral substance/s, the quantity of the neutral substance/s is not to be taken into

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<sup>6</sup> The Constitution of India, 1949.

<sup>7</sup> Rajesh Kumar, *Universal's Guide to the Constitution of India* 58 (Universal Law Publishing Co., New Delhi, 1<sup>st</sup>edn., 2011).

<sup>8</sup> The Constitution of India, 1949.

<sup>9</sup> Article 37 of the Constitution of India, 1949.

<sup>10</sup> Article 47 of the Constitution of India, 1949.

<sup>11</sup> Entry 19, List III, Seventh Schedule, The Constitution of India, 1949.

<sup>12</sup> Section 80 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

<sup>13</sup> Section 8 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

<sup>14</sup> Section 2(XI) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

<sup>15</sup> Section 2(XXIII) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

<sup>16</sup> Section 31A of Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

<sup>17</sup> 2012 BomCR (Cri) 121

<sup>18</sup> (2008) 5 SCC 161

consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance. It is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute small quantity or commercial quantity.

In the case of *Abdul Aziz v. State of UP*,<sup>19</sup> the court held that if a person arrested for minor offences under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 is entitled for bail.

Section 2(a), 4(2)(d), 7A, 39, 64A, 71, 76(2)(f) and 78(2)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 provides the provisions for rehabilitation and the treatment of drug addicts.

### **Causes of Drug Abuse in India**

There are various causes of drug abuse in India, it can be categorized as social, economic and mental causes. These causes are mentioned as below:

#### **Social Causes**

In social causes we can discuss about all those social problems which are the basic causes of drug abuse. A poor relationship with parents is responsible for drug abuse among children, in most of the families we can see a huge lack of communication between child and parents and these things leads the child towards drug abuse.<sup>20</sup> Sometimes we can see it become trend among friends to take drugs by influence of those friends who are usually taking drugs. Drug users are taking drugs because it is easily available, we can see in border area the people are taking drugs in a large scale because it is easily available in those areas.<sup>21</sup> Few of drug users are taking drugs because of their atmosphere, usually we can see it in those people who are growing up in a home where alcohol and drug abuse is considered as a normal behavior. Nowadays people are engaged in love affairs, the loss of a loved one and depression attracts a man more and more to the misuse of a substance. Unusual life style is also responsible for drug abuse, usually it is found in sex workers, transportation workers and street children.<sup>22</sup>

#### **Economic Cause**

In India poverty is a curse because it creates various problems one of them is drug abuse, financial worries leads people towards drug abuse because of mental pressure.<sup>23</sup> People are producing narcotic drugs to increase income, so production of narcotic drugs is responsible for misuse of drugs.

#### **Mental Causes**

There are mental causes which leads a person towards drug abuse situation of sadness, depression and stress are common causes for drug abuse. Sometimes users are misusing drugs

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<sup>19</sup> 2002 CriLJ 2913

<sup>20</sup> Drug Abuse Causes: What is the cause of Drug Abuse?, *available at*: <https://www.healthypalace.com/addictions/drug-addiction/drug-abuse-causes-what-is-the-cause-of-drug-abuse/> (Visited on July 15, 2017).

<sup>21</sup> Shekhar Saxena, *Alcohol and Drug Abuse* 206 (New Age International (P) Limited Publishers, New Delhi, 1<sup>st</sup> edn., 2003).

<sup>22</sup> Reasons for Substance Abuse, *available at*: <http://alcoholrehab.com/drug-addiction/reasons-for-substance-abuse/> (Visited on July 12, 2017).

<sup>23</sup> *Ibid*

because of low self-respect. Nowadays academic pressure is also creating stress because of this the people are misusing drugs.<sup>24</sup>

### **Conclusion and Suggestions to curb the Problem of Drug Abuse**

Drug abuse is illegal because of various reasons, so it should be prevented. We have various obligatory laws to prevent it but we are still facing the problem of drug abuse because of lack of implementation and lacunae in existing laws. In this section we are trying to suggest certain measures to curb the problem of drug abuse.

In *Bachpan Bachao Andolan v. Union of India & Ors.*<sup>25</sup> Supreme Court directed to the State to curb the child trafficking and drug abuse, for drug abuse among children court suggested the following things:<sup>26</sup>

1. A national action plan on substance abuse is required.
2. There is a need of counselling and rehabilitation to child affected by drug abuse.

There are some other suggestions which may be helpful to curb the problem of drug abuse, these are as follows:

1. There is need of communication between parents and child.
2. There should be a co-ordination between the multiple bodies which are established to fight with drug abuse.
3. Proper counselling of drug addicts is required.
4. By making awareness among people about drug abuse.
5. The improper policy of government for youngster is also responsible for drug abuse, so there is need of proper policy in favour of youngster's lifestyle which could reduce the social, mental, educational and economic pressure.
6. There is a need of proper control over the manufacture, distribution and import and export of chemicals which can be used in the illicit manner.<sup>27</sup>
7. Identification of drug users at an early stage is required in order to take corrective measures.<sup>28</sup>
8. The Narcotic Drugs and Psychotropic Substance Act does not make adequate distinctions between a casual drug user, a hard addict, a petty peddler and a seasoned drug trafficker, so there should be a proper demarcation between these four types of drug abusers.
9. This Act does not make any meaningful distinctions between hard and soft drugs which is the reason why many drug users resort to hard drugs<sup>29</sup>, so there is a need of different punishments for soft and hard drugs.

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<sup>25</sup> [2011] INSC 403

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